

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SPACESAVER CORPORATION,

Plaintiff,

v.

THE MARVEL GROUP, INC.,

Defendant.

ORDER

08-cv-354-slc

In this lawsuit plaintiff Spacesaver Corporation contends that defendant Marvel Group, Inc. is infringing two design patents it owns for gun cabinets, US Patent Nos. D564,818 and D577,529. In accordance with the court's August 28 scheduling order, dkt. #27, defendant has filed a motion requesting construction of several claim terms. Dkt. #67. Although plaintiff has filed its own motion requesting claim construction, its position is that no terms need to be construed. Dkt. #72.

The request for claims construction will be denied because the parties have failed to comply with the August 28 order, which advised the parties that it is their "burden to persuade the court that construction of each specified term is necessary to resolve a disputed issue concerning infringement or invalidity." Despite this instruction, defendant failed to identify in its brief how any of its proposed constructions was relevant to the merits of the case. Accordingly, the motions for claims construction, dkt. ## 67 and 72, are DENIED.

If either of the parties believes that a particular term in the patents needs to be construed, it will have to present that argument at summary judgment or at trial.

Entered this 31st day of December, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge